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SENATE

REPORT
101-226

MAKING MISCELLANEOUS AMENDMENTS TO INDIAN LAWS, AND FOR OTHER PURPOSES

NOVEMBER 21 (legislative day, NOVEMBER 6), 1989.—Ordered to be printed

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Mr. INOUYE, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 1846]

The Select Committee on Indian Affairs, to which was referred the bill (S. 1846) to make miscellaneous amendments to Indian laws, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

The amendment is as follows:

SECTION 1. (a) Public Law 100-581 is amended—

(1) by striking out "shall take effect upon enactment of this Act" in section 203 and inserting in lieu thereof "shall take effect upon enactment of this Act if the plan has not taken effect before the enactment of this Act";

(2) by striking out "section 201" in subsections (a) and (c) of section 212 and inserting in lieu thereof "section 206";

(3) by striking out section 213;

(4) by striking out "section 3" in section 702(a) and inserting in lieu thereof "section 703";

(5) by striking out "section 602" in the last sentence of paragraph (1) of section 703(b) and inserting in lieu thereof "section 702"; and

(6) by striking out "section 602" in section 703(c) and inserting in lieu thereof "section 702".

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(b) Subsection (c) of the first section of the Act of July 28, 1955 (69 Stat. 392; 25 U.S.C. 608(c)) is amended to read as follows:

"(c) Lands and interests in lands acquired by the Secretary pursuant to subsection (a)(1) and for the benefit of the Yakima Indian Nation pursuant to section 5 of the Act of June 18, 1934 (48 Stat. 985; 25 U.S.C. 465) shall be held in trust by the United States for the benefit of the Yakima Indian Nation.".

SEC. 2. (a) The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450, et seq.) is amended—

(1) by inserting a comma after "688)" in section 4(e) (25 U.S.C. 450b(e)),

(2) by striking out "the appropriate the Secretary" in section 4(j) and inserting in lieu thereof "the appropriate Secretary",

(3) by striking out "pursuant to this Act" each place it appears in section 4(j) and inserting in lieu thereof "under title I of this Act",

(4) by striking out "the Single Audit Act of 1984 (98 Stat. 2327, 31 U.S.C. 7501 et seq.)," in section 5(a)(2) (25 U.S.C. 450c(a)(2)) and inserting in lieu thereof "chapter 75 of title 31, United States Code",

(5) by striking out "the Federal Grant and Cooperative Agreement Act of 1977 (Public Law 95-224; 92 Stat. 3)" in section 9 (25 U.S.C. 450e-1) and inserting in lieu thereof "chapter 63 of title 31, United States Code",

(6) by striking out "an Indian appointed" in section 104(m) (25 U.S.C. 450i(m)) and inserting in lieu thereof "an Indian (as defined in section 19 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 479)) appointed (except temporary appointments)",

(7) by striking out "sub-contracts in such cases where the tribal contractor has sub-contracted the activity" in section 105(a) (25 U.S.C. 450j(a)) and inserting in lieu thereof "subcontracts of such a construction contract",

(8) by striking out "the Single Agency Audit Act of 1984 (chapter 75 of title 31, United States Code)" in section 106(f) (25 U.S.C. 450j-1(f)) and inserting in lieu thereof "chapter 75 of title 31, United States Code",

(9) by striking out "agency personnel" in section 106(i) (25 U.S.C. 450j-1(i)) and inserting in lieu thereof "agency personnel (area personnel in the Navajo Area and in the case of Indian tribes not served by an agency)", and

(10) by striking out "providing notice and hearing" in section 109 (25 U.S.C. 450m) and inserting in lieu thereof "providing notice and a hearing".

(b) Subsection (b) of section 110 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450m-1(b)) is amended to read as follows:

"(b) The Secretary shall not revise or amend a self-determination contract with a tribal organization without the tribal organization's consent.".

(c) Subparagraph (C) of section 3371(2) of title 5, United States Code, is amended by striking out "section 4(m)" and inserting in lieu thereof "section 4".

SEC. 3. (a) Notwithstanding section 18 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 478), section 2 of that Act (25 U.S.C. 462) shall apply to—

(1) all Indian tribes,

(2) all lands held in trust by the United States for Indians, and

(3) all lands owned by Indians that are subject to a restriction imposed by the United States on alienation of the rights of the Indians in the lands.

(b) The proviso of section 13 of the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 473) is amended by striking out "sections 2, 4," and inserting in lieu thereof "sections 4,".

SEC. 4. Subsection (c) of section 1 of Public Law 100-425 is amended by striking out "NE¼E½, NW¼" each place it appears and inserting in lieu thereof "NE¼, E½NW¼".

SEC. 5. Subsection (e) of section 4213 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2433 (e)) is amended—

(1) by inserting ", or purchase or lease of land or facilities for," after "renovation of" in paragraph (1),

(2) by striking out "subject to contracting" in paragraph (3) and inserting in lieu thereof "subject to contracting or available for grants", and

(3) by adding at the end thereof the following new paragraphs:

"(4) Funds appropriated under the authority of this subsection may be used by any Indian tribe or tribal organization to purchase or lease any land or facilities if—

"(A) the Secretary of the Interior determines that no Federal land or facilities are reasonably available for emergency shelters or half-way houses described in subsection (a) to serve the needs of that Indian tribe or tribal organization, and

"(B) the Indian tribe or tribal organization enters into an agreement with the Secretary of the Interior that requires the Indian tribe or tribal organization to use the land or facilities for emergency shelters or half-way houses described in subsection (a).

"(5) Nothing in this Act may be construed—

"(A) to limit the authority for contracts with, or grants to, Indian tribes or tribal organizations under the Indian Self-Determination Act for the construction, improvement, renovation, operation, repair, land acquisition, or maintenance of tribal

juvenile detention facilities, emergency shelters, or half-way houses, or

"(B) to require a lease of tribal facilities to the United States to qualify for financial assistance for the facilities under this or any other Act.".

SEC. 6. (a) Section 317(a) of the Public Health Service Act (42 U.S.C. 247b) is amended by inserting ", to Native Hawaiian health centers (as defined in section 8(4) of the Native Hawaiian Health Care Act of 1988)," before "and to other public entities".

(b)(1) Section 318(a) of the Public Health Service Act (42 U.S.C. 247c(a)) is amended by inserting ", to Native Hawaiian health centers (as defined in section 8(4) of the Native Hawaiian Health Care Act of 1988)," before "and to scientific".

(2) Section 318(b) of the Public Health Service Act is amended by inserting "Native Hawaiian health centers (as defined in section 8(4) of the Native Hawaiian Health Care Act of 1988)," before "and any other public".

(c) Section 332(a)(2)(A) of the Public Health Service Act (42 U.S.C. 254e(a)(2)(A)) is amended by inserting "Native Hawaiian health centers (as defined in section 8(4) of the Native Hawaiian Health Care Act of 1988)," before "and community health".

(d) Section 1001(a) of the Public Health Service Act (42 U.S.C. 300(a)) is amended by inserting "and Native Hawaiian health centers (as defined in section 8(4) of the Native Hawaiian Health Care Act of 1988)," before "to assist in the establishment".

(e) Section 1703(a)(1) of the Public Health Service Act (42 U.S.C. 300u-2(a)(1)) is amended by inserting "Native Hawaiian health centers (as defined in section 8(4) of the Native Hawaiian Health Care Act of 1988)," before "and other appropriate".

SEC. 7. Title I of the Indian Health Care Improvement Act (25 U.S.C. 1601, et seq.) is amended by adding at the end thereof the following new section:

"ADVANCED TRAINING FOR PSYCHOLOGISTS

"SEC. 118. (a)(1) The Secretary, acting through the Service, shall provide grants to institutions of higher education and health care facilities to enable such institutions and facilities to establish programs to enable psychologists who—

"(A) have a doctorate degree in psychology, and

"(B) agree to perform the service obligations described in subsection (b),

to pursue advanced training or research in psychology.

"(2) Each program established under a grant provided under paragraph (1) shall provide psychologists who agree to perform the service obligation described in subsection (b) scholarships and stipends for living expenses incurred while the psychologists participate in the program.

"(b) An individual who participates in a program established under a grant provided under subsection (a) shall incur an obligation to serve in an Indian health program (as defined in section 108(a)(2)), or in a Native Hawaiian health center (as defined in section 8(4) of the Native Hawaiian Health Care Act of 1988 (42 U.S.C. 11707(4))) for a period of obligated service equal to at least the period of time during which the individual participates in the program established under a grant provided under subsection (a). In the event that the individual fails to complete such obligated service, the individual shall be subject to penalties prescribed by the Secretary which provide appropriate recoupment for the loss of the remaining obligated service of such individual.

"(c) The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section.

"(d) There are authorized to be appropriated for each fiscal year $1,000,000 to carry out the provisions of this section.".

SEC. 8. (a) Paragraph (5) of section 1139 of the Education Amendments of 1978 (25 U.S.C. 2019) is amended by striking out "104(a)" and inserting in lieu thereof "103(a)".

(b) Subsection (a) of section 5209 of the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2508) is amended by striking out "105" and inserting in lieu thereof "104".

(c) Subparagraph (C) of section 5314(e)(1) of the Indian Education Act of 1988 (25 U.S.C. 2604(e)(1)(C)) is amended to read as follows:

"(C) No local educational agency may be held liable to the United States, or be otherwise penalized, by reason of the findings of any audit that relate to the date of completion, or the date of submission, of any forms used to establish, before April 28, 1988, a child's eligibility for entitlement under the Indian Elementary and Secondary School Assistance Act.".

(d)(1) Subsection (c) of section 1128 of the Education Amendments of 1978 (25 U.S.C. 2008(c)) is amended—

(A) by striking out "0.133 percent" in paragraph (3)(A) and inserting in lieu thereof "0.2 percent",

(B) by striking out "$4,000" in paragraph (3)(C)(i) and inserting in lieu thereof "$5,000",

(C) by striking out clause (ii) of paragraph (3)(C) and inserting in lieu thereof the following:

"(ii) the lesser of—

"(I) $15,000, or

"(II) 1 percent of such allotted funds,".

(D) by striking out paragraph (2), and

(E) by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively.

(2) Section 5324(c)(4)(B) of the Indian Education Act of 1988 (25 U.S.C. 2624(c)(4)(B)) is amended by striking out "section 1128(c)(4)(A)(i)" and inserting in lieu thereof "section 1128(c)(3)(A)(i)".

(e)(1) Subsection (b) of section 5504 of Public Law 100-297 (25 U.S.C. 2001, note) is amended—

(A) by inserting "the Executive Director of the National Advisory Council on Indian Education and of" after "which shall consist of" in paragraph (1),

(B) by inserting "(but not the Executive Director of the National Advisory Council on Indian Education)" after "Task Force" in paragraph (3), and

(C) by adding at the end thereof the following new paragraph:

"(7) Sums appropriated under the authority of section 5508 shall not be used to pay the salaries of employees of the Department of the Interior or the Department of Education who are assigned as staff to the Task Force; but the salaries of such employees shall be paid out of funds appropriated to the employing Department under the authority of other provisions of law.".

(2) Subsection (a) of section 5506 of Public Law 100-297 is amended—

(A) by striking out "and" at the end of paragraph (5),

(B) by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and", and

(C) by adding at the end thereof the following new paragraph:

"(7) the chairman of the National Advisory Council on Indian Education.".

(3) Section 5508 of Public Law 100-297 is amended by striking out "1988, 1989, and 1990" and inserting in lieu thereof "1990, 1991, and 1992".

(f) Subsection (d) of section 1128A of the Education Amendments of 1978 (25 U.S.C. 2008a(d)) is amended by adding at the end thereof the following new paragraph:

"(4) In applying this section and section 106 of the Indian Self-Determination and Education Assistance Act with respect to an Indian tribe or tribal organization that—

"(A) receives funds under this section for administrative costs incurred in operating a contract school, and

"(B) operates one or more other programs under a contract or grant provided under the Indian Self-Determination and Education Assistance Act,

the Secretary shall ensure that the Indian tribe or tribal organization is provided with the full amount of the administrative costs, and of the indirect costs, that are associated with operating the contract school and all of such other programs.".

(g) Subsection (b) of section 5205 of the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2504(b)) is amended by adding at the end thereof the following new paragraph:

"(4) Notwithstanding any other provision of law, if an Indian tribe or tribal organization requests a grant under

this part for a tribally controlled school, funds for the operation and maintenance of the school shall be included in any grant provided under this part to the Indian tribe or tribal organization in an amount equal to the amount of operation and maintenance that would be expended for the school under any circumstances for the entire fiscal year for which the grant is provided. The inclusion of such operation and maintenance funds in the grant—

"(A) shall not be subject to any condition or restriction that is not specifically provided under this section, and

"(B) shall not be affected by, or depend upon, the previous existence or nonexistence of a contract between the Secretary and the Indian tribe or tribal organization for such operation and maintenance funds (or any portion of such funds).

SEC. 9. Notwithstanding any other provision of law, the term "class II gaming" includes, for purposes of applying Public Law 100-497 with respect to any Indian tribe located in the State of Wisconsin or the State of Montana, during the 1-year period beginning on the date of enactment of this Act, any gaming described in section 4(7)(B)(ii) of Public Law 100-497 that was legally operated on Indian lands on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated made a request, by no later than November 16, 1988, to the State in which such gaming is operated to negotiate a Tribal-State compact under section 11(d)(3) of Public Law 100-497.

SEC. 10. Section 9 of the Lac Vieux Desert Band of Lake Superior Chippewa Indians Act (25 U.S.C. 1300h-7) is amended—

(1) by striking out "Notwithstanding" and inserting in lieu thereof "(a) Notwithstanding", and

(2) by adding at the end thereof the following new subsection:

"(b) The Secretary shall accept as voters eligible to vote on any amendments to the constitution of the Keweenaw Bay Indian Community—

"(1) all those persons who were deemed eligible by the Keweenaw Bay Indian Community to vote in the most recent election for the Tribal Council, and

"(2) any other person certified by the Keweenaw Bay Indian Community Tribal Council as—

"(A) a member of the Keweenaw Bay Indian Community, and

"(B) eligible to vote in any election for the Tribal Council.".

SEC. 11. The White Earth Reservation Land Settlement Act of 1985 (25 U.S.C. 331, note) is amended—

(1) by inserting "(other than laws relating to spousal allowance and maintenance payments)" after "Minnesota law", and also after "laws of Minnesota", in section 3(l), and

(2) by adding at the end of section 7 the following new subsection:

"(e)(1) After publication of the second list under subsection (c), the Secretary may, at any time, add allotments or interests to that second list if the Secretary determines that the additional allotment or interest falls within the provisions of section 5(c) or subsection (a) or (b) of section 4.

"(2) The Secretary shall publish in the Federal Register notice of any additions made under paragraph (1) to the second list published under subsection (c).

"(3) Any determination made by the Secretary to add an allotment or interest under paragraph (1) to the second list published under subsection (c) may be judicially reviewed in accordance with chapter 7 of title 5, United States Code, within 90 days after the date on which notice of such determination is published in the Federal Register under paragraph (2). Any legal action challenging such a determination that is not filed within such 90-day period shall be forever barred. Exclusive jurisdiction over any legal action challenging such a determination is vested in the United States District Court for the District of Minnesota.".

SEC. 12. (a) Paragraph (4) of section 8 of the Native Hawaiian Health Care Act of 1988 (42 U.S.C. 11707(4)) is amended by inserting "or professionals" after "practitioners" each place it appears.

(b) Subtitle D of title II of Public Law 100-690 is repealed.

SEC. 13. The Hoopa-Yurok Settlement Act (25 U.S.C. 1300i, et seq.) is amended—

(1) by adding at the end of paragraph (2) of section (5)(a) the following new sentence: "Children under age 10 on the date they applied for the Settlement Roll who have lived all their lives on the Joint Reservation or the Hoopa Valley or Yurok Reservations, and who otherwise meet the requirements of this section except they lack 10 years of Reservation residence, shall be included on the Settlement Roll.",

(2) by adding at the end of subsection (d) of section 5 the following new paragraph:

"(4) For the sole purpose of preparing the Settlement Roll under this section, the Yurok Transition Team and the Hoopa Valley Business Council may review applications, make recommendations which the Secretary shall accept unless conflicting or erroneous, and may appeal the Secretary's decisions concerning the Settlement Roll. Full disclosure of relevant records shall be made to the Team and to the Council notwithstanding any other provision of law.".

(3) by striking out "counseling," in section (9)(a)(3) and inserting in lieu thereof "counseling and assistance, shall", and

(4) by adding at the end of subsection (a) of section 9 the following new paragraph:

"(4) For purposes of section 14, and any other lawsuit challenging this Act or any action taken under this Act, the Yurok Transition Team shall be a Federal instrumentality and the United States will defend and hold harmless, individually and collectively, the Yurok Transition Team.".

PURPOSE

S. 1846 makes miscellaneous amendments to Indian laws.

BACKGROUND

During the 100th Congress, over 30 new statutes on Indian matters were enacted into law. The issues were wide-ranging and some of the legislation was quite extensive: a new Indian Health Care Improvement Act, a rewrite of the Indian Education Act plus amendments to other Indian education laws, amendments to the Indian Reorganization Act of 1934, a new law to regulate gaming on Indian lands, and major amendments to the 1978 Indian Self-Determination and Education Assistance Act, to name just a few. As with any new laws or extensive amendments, technical errors such as incorrect-references or citations occur.

S. 1846 corrects several errors that appeared in last year's new laws or, in some cases, errors that occurred in earlier years but which have been recently discovered. In addition, the bill proposes certain non-substantive changes in other laws in order to better fulfill or clarify the intent of the Congress or to facilitate the administration of the law. Since introduction of the bill on November 7, 1989, several other issues were brought to the attention of the Select Committee on Indian Affairs and those issues are resolved in the amendment in the nature of a substitute that is the subject of this report.

In addition to technical corrections to the Indian Reorganization Act amendments and the Indian Self-Determination and Education Assistance Act, as amended S. 1846 amends the Indian Alcohol and Substance Abuse Prevention and Treatment Act to clarify that the authority for financial assistance for tribal facilities extends to all facilities, not just those leased by the Federal government. The bill amends the Indian Health Care Improvement Act to provide for post-doctoral training for psychologists in return for their serving in Indian and Native Hawaiian health programs. In amending the new Indian Education Act Amendments of 1988, the bill provides that the executive director and chairman of the National Advisory Council on Indian Education will participate in the White House Conference on Indian Education. S. 1846 also extends the grace period during which tribes in Montana and Wisconsin may continue to operate certain games as they seek to enter into tribal/state compacts under the new Indian Gaming Act. The section-by-section analysis below provides details on each section of the bill.

LEGISLATIVE HISTORY

S. 1846 was introduced by Senator Inouye on November 7, 1989.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Select Committee on Indian Affairs, in open business session on November 14, 1989, by a unanimous vote and with a quorum present, recommends that the Senate pass S. 1846 as amended.

SECTION-BY-SECTION ANALYSIS

Section 1. Amends Public Law 100-581, the 1988 Indian Reorganization Act (IRA) Amendments, an Act that made many technical and conforming changes to the IRA and to other Indian laws.

(a)(1) amends section 203 by changing the effective date of the section with respect to distribution of a Choctaw and Chickasaw judgment fund distribution. Under current law (25 U.S.C. 1405(a)) a plan becomes effective "at the end of the sixty-day period (excluding days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a day certain) beginning on the day such plan is submitted to the Congress". The amendment provides that if the plan dated July 7, 1988 that was submitted by the Assistant Secretary of the Interior for Indian Affairs to the Congress pursuant to the Indian Tribal Judgment Funds Use or Distribution Act, as amended, for the division and use of the judgment funds awarded the Choctaw and Chickasaw Indians in Docket Numbered 387-85L of the United States Claims Court did not take effect prior to the enactment of Public Law 100-581, then the plan is to take effect on the date of enactment of Public Law 100-581.

(a)(2) amends section 212 which made certain technical changes to the Indian Self-Determination and Education Assistance Act by correcting errors in section number references.

(a)(3) corrects a citation which incorrectly refers to an earlier amendment to the Act rather than to the amended Act.

(a) (4), (5), and (6) correct three cross reference section numbers in the Southern California Indian Land Transfer Act (Title VII of Public Law 100-581).

(b) In the last Congress, in Public Law 100-581 (see (a)(3) above), Congress amended a previous Act to provide that lands purchased, sold, or exchanged for the Yakima Indian Reservation are held in trust by the United States for the Yakima Indian Nation. This section is a rewrite that cites the correct statute.

Section 2. Subsections (a), (b) and (c) make technical corrections to errors contained in Public Law 93-531, as amended by Public Law 100-472, the Indian Self-Determination and Education Assistance Act.

Section 3. (a) provides that trust and restricted Indian lands which have not been subject to the Indian Reorganization Act of 1934 (IRA) shall be subject to the same indefinite extension of the trust or restriction period for Indian lands provided in section 2 of the 1934 Act. Currently the trust and excepted provisions affected by the amendment are extended by order of the Secretary of the Interior every five years as a ministerial function. (See 25 CFR Appendix to Chapter I). Such separate treatment is not appropriate and is administratively burdensome. This amendment is consistent with the extension in 1983 of another provision of the 1934 Act re-

lating to land acquisition to all tribes under section 203 (25 U.S.C. 2202) of the Indian Land Consolidation Act.

(b) amends the proviso of section 13 of the 1934 Act so that the intent of (a) relating to trust lands will apply to certain tribes named in the proviso clause.

Section 4. Makes a technical correction in a land description contained in Public Law 100-425, an Act establishing a reservation for the Confederated Tribes of the Grand Ronde Community of Oregon.

Section 5. Amends the 1986 Indian Alcohol and Substance Abuse Prevention and Treatment Act as amended by Public Law 100-690, to make it clear that the funds appropriated to operate emergency shelters may be used to purchase land or facilities. Section 5 is identical to S. 1813 introduced by Senator Gorton and others on October 31, 1989, as that bill was ordered reported by the Committee on November 9, 1989. (See Senate Report 101-207 on S. 1813, for more details on this provision.)

Section 6. Amends the Public Health Service Act to clarify that the authority of the Secretary of Health and Human Services to make grants also includes authority to make grants to Native Hawaiian health centers.

Section 7. Amends the Indian Health Care Improvement Act to include post-doctoral training for psychologists who agree to serve in an Indian or Native Hawaiian health program. An authorization of $1 million is included for this purpose.

Section 8. Make amendments to the Indian Education Amendments of 1988, title V of Public Law 100-297, as follows:

(a) and (b) make conforming cross references to provisions of the Indian Self-Determination and Education Assistance Act which were redesignated by Public Law 100-472.

(c) Further clarifies the intent of the Congress, as expressed in certain language of the 1988 amendments, that audit exceptions based on eligibility criteria imposed by the Office of the Inspector General at the Department of Education are not to be subject to recovery, regardless of the date the audit exception notices were made. Beginning in 1985, the Department of Education began attempts to alter the eligibility rules that had been in place for Part A of the Indian Education Act since it was enacted in 1972. (Part A is a formula program for grants to public schools supplementary education for Indian children.) The public schools districts objected to the proposed changes and Congress responded in Public Law 100-297 by mandating in the law the previous eligibility rules. In addition, Congress responded to the problem of recoveries against certain school districts which had, in good faith, relied on program guidelines in making their student eligibility counts. The Departmental auditors imposed, *ex post facto*, a different set of criteria on the schools and began to make audit exceptions and to send notices for recovery of funds. The following language in Public Law 100-297 was drafted in consultation with personnel of the Department of Education:

"5314(e)(1)(C) No local education agency may be held liable to the United States, or be otherwise penalized, by reason of the findings of any audit conducted before the date of enactment of this Act that—

(i) relate to the date of completion, or the date of submission, of any forms used to establish a child's eligibility for entitlement under the Indian Elementary and Secondary School Assistance Act, and

(ii) are the subject of any administrative or judicial proceeding pending on the date of enactment of this Act."

The Department has subsequently interpreted this language very narrowly so that recoveries were waived only for those school districts against which proceedings had actually begun or which had received notice of audit exceptions by date of enactment of the Act. The auditors have determined that those districts against which no proceeding had begun by April 28, 1988, remain liable for the recovery of funds, despite the clear intent of the law. The new language simply provides that any reliance on the questioned criteria that arose prior to date of enactment is forgiven, regardless of when the proceedings began.

(d)(1)(A) increases the funding set aside for school board training and for school board expenses from 0.133 to 0.2 percent. The 1988 law failed to account for the training expenses in the contract with the Navajo Area School Board in calculating the percentage to be set aside.

(d)(1) (B) and (C) amend the provisions of law which set out the formula used to determine the amount of funds which are available for local school boards to meet their operating and other expenses and which are not subject to the regular appeal procedures of section 1129(b). By setting the lower limit at $5,000 and the upper limit at the lesser of $15,000 or one percent, the Committee does not intend to treat the formula generated amount as an absolute cap on school board expenses. Should special circumstances require, school boards may increase the amounts established by the formula using the general authority of section 2009(b) to amend the local financial plan to increase their board expenses budget in excess of the formula amount. Only those expenses expressly defined as board expenses under this section can be included in such a financial plan amendment. Such proposed increases may be necessary in circumstances where a special initiative of a school or school board may impose on the board the need for specialized training, technical or legal assistance for which funds are unavailable through the established expense budget. There may also be unusual situations where the amount established under this section is insufficient to meet the board's basic expenses, due to travel distances or other factors.

(e) Appropriations for the White House Conference on Indian Education were authorized for fiscal year 1988, 1989, and 1990. Since funds have been appropriated in fiscal year 1990, the authorization dates are moved forward to fiscal years 1990, 1991, and 1992. Further, the Executive Director of the National Advisory Council on Indian Education (NACIE) will serve on the working Task Force for the Conference and the Chairman of NACIE will serve on the Advisory Committee. The section also provides that salaries for employees appointed by the Secretaries of the Interior and Education will be paid out of departmental funds, not from funds appropriated for the Conference.

(f) Amends the Administrative Cost Grant formula to assure that multi-program contractors-grantees (those who operate both a school program and one or more other Self-Determination Act, Public Law 93-638, programs) are entitled to receive full funding of the indirect and administrative costs associated with all their program operations. The amendment is necessary to clear up confusion caused by the administrative cost grant provision (25 U.S.C. 1128A) regarding multi-program contractors—those which run school programs and other programs. Two tribes, Ramah-Navajo and Mississippi Choctaw have had difficulty in getting agreements with the BIA to fund all of their indirect cost needs on both their school and non-school programs. The amendment instructs the Secretary of the Interior to interpret section 1128A and section 106 of the Indian Self-Determination Act to assure that the indirect costs of multi-program contractors are fully covered. The Committee does not intend that an Indian tribe or tribal organization (school board) receive more than it is entitled to for contract support (i.e., the indirect cost rate must segregate the administrative grant from the base funding so that program funds are not included in the calculation).

(g) Clarifies the intent of the Congress to apply the provisions of section 5205(b) to the facilities and operations funds for tribally controlled schools regardless of whether there was a contract between the Secretary and the Indian tribe or tribal organization for such funds prior to the tribe or organization's request that these funds be included in the school grant.

Section 9. Provides for a one-year extension of the grace period during which tribes in Wisconsin and Montana may continue to operate certain games that were designated as Class III games in Public Law 100-497, the National Indian Gaming Regulatory Act Class III gaming requires compacts between tribes and states. Tribes in both Montana and Wisconsin are close to reaching agreements with the States. Under this amendment the games will continue to be operated legally and will not be subject to closure by U.S. Attorneys in Wisconsin and Montana for the additional grace period.

Section 10. Makes clear that the persons eligible to vote on a revision of amendments to the constitution of the Keweenaw Bay Indian Community shall not be restricted to that class of persons who were previously deemed eligible to vote on the constitution of the Community at the time of its adoption or last amendment, but shall extend to any person who has been deemed eligible to vote in the most recent Community elections of the Tribal Council, and any other persons certified by the Tribal Council to be a member of the Keweenaw Bay Indian Community and eligible to vote in an election for the Tribal Council.

The provision is intended to cover any amendment to the Tribe's constitution including a vote on the ratification of a wholly revised constitution. Subsequent amendments or revisions to the Tribe's constitution after the initial vote or amendments or revisions to the constitution shall be subject to the membership and voting criteria which may be ratified pursuant to this provision.

Section 11. Makes two amendments to the White Earth Reservation Land Settlement Act. The first amendment provides for ex-

emptions from consideration in determination of entitlement laws of the State of Minnesota relating to spousal allowance and maintenance payments. Such claims under such state laws were never contemplated within the settlement act. The second amendment authorizes the Secretary of the Interior to publish in the *Federal Register* any allotment or interest claims that are additional to the second list of such claims that have already been published. This latter amendment is needed because claims have been discovered subsequent to the publication of this final list and authorization for further publication is necessary to achieve the purposes of the Act.

Section 12. Technical amendment to Native Hawaiian Health Care Act to include the word "professional" with the word "practitioner" and an amendment to delete the dual enactment in the 100th Congress of the Native Hawaiian Health Care Act of 1988.

Section 13. Makes amendments to the Hoopa Yurok Settlement Act that was enacted last year (Public Law 100-580). Explanations of the amendments 1 through 4 of this section follow:

(1). Subsection (1) amends section 5(a)(2) of Public Law 100-580 addresses the special situation of children under ten years of age who were born on and have lived their whole lives on the (former) Joint Reservation and who timely applied for inclusion on the Settlement Roll. The Committee notes that the Yurok Transition Team and the Hoopa Valley Business Council have jointly discussed and considered the subject of this amendment and have unanimously supported the clarification of the entitlement criteria of the Act represented by this amendment.

Section 1(b)(5) of the Act sets the criteria for persons who can qualify as Indians of the Reservation by reference to certain court orders in *Short* v. *United States,* Cl. Ct. No. 102-63. Six of the referenced orders, the order of March 1, 1988 and the five orders of May 14, 1987 (the reference to May 17, 1987 in the subsection is erroneous) refer to the Manifest Injustice exception to the court's Standards A-E. All six of those orders indicate that a criterion of the Manifest Injustice exception is "a substantial period of residence on the Reservation," but the order of March 1, 1988 specifies that this requires "nearly ten years of residence." The March 1, 1988 order addressed only persons over the age of 10 years and should not be applied by the Secretary to conclude that persons born on and who have lived their whole lives on the Reservation fail the requirement that they show a "substantial period of residence on the Reservation," merely because they have not been alive for 10 years.

This amendment will make clear that the Act assures that the Manifest Injustice exception is available to otherwise qualified children not old enough to have 10 years of Reservation residence. Of course some of those children will qualify alternatively under Standard E, defined in the order of March 31, 1982, but the Manifest Injustice exception should be a possibility for applicants of any age. This amendment should not be taken as an indication that the Act did not already provide for such treatment of these children; it merely clarifies the matter to avoid confusion or delay.

(2). Subsection (2) provides for a new paragraph to be added to Section 5(d) of Public Law 100-580 to resolve difficulties that have arisen between the Bureau of Indian Affairs on the one hand and

the Yurok Transition Team and the Hoopa Valley Tribe on the other concerning the Settlement Roll preparation process. It will also meet an appeal pending before the Interior Board of Indian Appeals, *Hoopa Valley Tribe* v. *Director of Administration,* Bureau of Indian Affairs, No. IBIA 89-90-A.

The Committee intends that the Bureau apply its regulations, including those adopted for preparing the Settlement Roll, 25 CFR Parts 61 and 62, in a manner that provides the Yurok Transition Team and the Hoopa Valley Tribe full access to Settlement Roll applications, computer summaries, and related records, and that accords the Team and the Tribe standing to appeal actions they consider erroneous. In effect, the Yurok Transition Team and the Hoopa Valley Business Council will be treated as "Tribal Committees" within the meaning of those regulations. Thus, the continued use of those regulations should be appropriate, as modified by this amendment with respect to 25 CFR sections 61.10(c) and 61.11(b). This amendment should not be taken as an indication that the Act did not already provide for such treatment of the Team and the Business Council; it merely clarifies the matter to avoid confusion or delay.

It is the understanding of the Committee that the Hoopa Valley Tribe and the Yurok Transition Team are working to develop a Memorandum of Understanding or Memorandum of Agreement between the Team and the Tribe establishing a process for exchange of information and development of recommendations for submission to the Bureau of Indian Affairs, and policies that will guide the Team and the Tribe in assertion of appellate rights under the provisions of this amendment. It is the Committee's expectation that full access to settlement roll data will be required between the Team and the Tribe.

Settlement Roll decisions directly affect the proper implementation of this Act. It is therefore essential that the Team and the Tribe be fully involved in the preparation of the Roll. The Committee expects the Team and the Tribe to protect the integrity of records that come under their control and to provide adequate safeguards while using those records.

The Committee is aware of the logistical difficulty of making sound decisions on over 8000 applications for the Settlement Roll, particularly when those applications may include ones from persons held not qualified in the *Short* cases, applications submitted in the names of deceased persons, multiple applications from the same individual, and applications with little documentation of ancestral claims. The specialized knowledge possessed by members of the Team and the Tribe by virtue of their long involvement in the *Short* cases will be helpful in preparing an accurate Settlement Roll, since many applicants are themselves *Short* plaintiffs or are related to family groups considered in those cases.

The Team and the Tribe are not obligated by this amendment to make any recommendation concerning Settlement Roll applicants, nor is the Secretary obligated to extend the time for completion and publication of the Roll to allow completion of the recommendations. It is recognized that the Secretary has already missed certain deadlines in the Act necessitating some time extensions already. Further extensions may occur. However, the Committee believes it

is in the interest of all concerned to complete the Settlement Roll as quickly as practicable so the Yurok Tribe can have the opportunity to organize and elect a tribal governing body. It is for this reason that the Committee has not mandated that work on the Settlement Roll be suspended pending receipt of recommendations from the Team and the Tribe. As noted in Senate Report 100-564, page 21, appeals should not delay the Hoopa-Yurok Settlement Roll from being made final; and the organization and election of the Interim Council of the Yurok Tribe should proceed according to the provisions of section 9.

Nevertheless, the amendment obligates the Secretary to accept the recommendation of the Team or the Tribe concerning the inclusion of an applicant unless those recommendations are erroneous, as he would under 25 CFR 61.11, or unless the Team and the Tribe make wholly irreconcilable recommendations concerning the same individual. Recommendations that are inconsistent with the eligibility criteria or other provisions of this Act, or otherwise contrary to law shall be deemed to be erroneous. Thus, if one recommendation is inconsistent with the eligibility criteria, but the other is consistent with the criteria and is not erroneous, the Secretary should accept the latter recommendation under this amendment. It is not the Committee's intent that these amendments have any effect on the pending entitlement proceedings in the *Short* cases.

(3). Subsection (3) amends section 9(a)(3) of Public Law 100-580 to make clear that the Yurok Transition Team may play an active role in aiding persons applying for the Settlement Roll. The original term "counseling" in the subsection should have been interpreted by the Bureau of Indian Affairs to permit the Yurok Transition Team to perform a wide range of activities that would assist applicants, such as aiding in location of documents that may be relevant, preparation of family tree charts, furnishing information on any aspect of administrative process, including appeals, and making inquiries of federal or non-federal agencies and officials, concerning Settlement Roll preparation. The addition of the term "assistance" makes clear what was originally intended to be the Team's role with respect to the Settlement Roll.

The need for this amendment reflects a general problem that the Committee has identified in its oversight of the implementation of Public Law 100-580. The Bureau of Indian Affairs is narrowly construing the provisions of the Act with respect to the Yurok Transition Team. Although the Team clearly does not possess the powers of a tribal government—powers that will be assumed by the Interim Council and eventually by the organized Tribal government—it is clear that the Team's role is one of transition between administration by the Bureau of Indian Affairs and the future administration by an elected tribal government. It is the Committee's intent that the provisions of section 9(a) be liberally construed to enable the Yurok Transition Team to provide assistance to the Yurok people and prepare the tribe and the reservation for the establishment of the Interim Tribal Council as provided in the Act.

Of primary importance is the establishment of the Settlement Roll and the counseling function of the Team. Identification of programs, resources, and facilities, as well as assisting in economic development planning, are also important aspects of the Team's re-

sponsibilities. The Bureau of Indian Affairs should also liberally construe these aspects of the Team's responsibility: for example, if the Team identifies resources of the Yurok Reservation that it believes may be endangered, the Team may aggressively assert the matter with the Trustee and other pertinent officials; or if the Team identifies resources within the Yurok Reservation that may become available, it can explore methods of obtaining such resources for the Yurok Tribe and for that matter receive property on behalf of the Yurok Tribe. However, this amendment is not to be construed so as to authorize use by the Yurok transition Team of settlement funds under section 4 for purposes of purchase of real property for the tribe.

It is imperative that the Team continue to assist the Committee as well as other government and non-governmental officials in the implementation of the Act. Of necessity this job will require some travel and meetings between Team officials and others. There is no basis in the Act for the Bureau of Indian Affairs to micromanage these activities or to require approval, for instance, of individual travel plans.

(4). Subsection (4) amends section 9(a)(3) or Public Law 100–580 to clarify the status of the Yurok Transition Team individually, and as a body, since the Team and its members may lack the tribal sovereign immunity that protects the Hoopa Valley Business Council and its members while acting within the scope of either their tribal governmental authority or the authorities delegated by this Act. E.g., *Hardin* v. *White Mountain Apache Tribe.* 779 F. 2d 476 (9th Cir. 1985). Therefore the Committee finds that it is necessary to require the United States to defend and indemnify team members in the event they are named as defendants in suits challenging the Act as a taking or as having provided inadequate compensation, and thus within the ambit of section 14. Such a defense and indemnification is also necessary in the event persons sue concerning acts of the Team taken within the scope of the authority granted by this Act, such as the Team's assistance and counselling activities and work with respect to the Settlement Roll. Given the extent of the Bureau of Indian Affairs involvement and oversight of the Yurok Transition Team, a court may well have treated the Team as an agency or instrumentality for such suits. This amendment clarifies how such matters should be handled.

This amendment does not require the United States to generally represent the Team, challenge any provisions of the Act, nor bring any claims, cross claims or counterclaims on behalf of the Team or its individual members. This amendment does not require the United States, as a trustee, to side with one tribe or group against another, since the United States has trust responsibilities to the Hoopa Valley Tribe as well as the Yurok Tribe.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate of S. 1846, as amended, as evaluated by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 17, 1989.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1846, a bill to make miscellaneous amendments to Indian laws, and for other purposes, as ordered reported by the Senate Select Committee on Indian Affairs, November 14, 1989. CBO estimates that enactment of this bill would result in additional outlays of about $500,000 in fiscal year 1990 and $1 million annually thereafter, if the authorized amounts are appropriated. No costs would be incurred by state and local governments as a result of this bill.

S. 1846 would make a wide variety of changes to current laws dealing with Indian issues. Most of the changes are technical or administrative in nature and involve correcting legal citations and modifying legal language. These provisions include changes in Indian education programs, amendments to the Indian Reorganization Act and a number of provisions related to Indian Health Service (IHS) programs.

The bill would also make a number of substantive changes. Section 5, which is identical to S. 1813, as ordered reported by the Senate Select Committee on Indian Affairs, November 9, 1989, would amend the Indian Alcohol and Substance Abuse Prevention and Treatment Act to allow the purchase of land for emergency shelter, using funds already authorized. This section is not expected to result in additional costs to the federal government.

Section 7 would amend the Indian Health Care Improvement Act to provide post-doctoral training for psychologists who agree to serve in an Indian health program or Native Hawaiian health center. This section would authorize the appropriation of $1 million per year for this program. We estimate that this would increase outlays by $500,000 in fiscal year 1990 and $1 million per year thereafter, assuming appropriation of the authorized amounts.

Sections 11 and 13 would clarify the determination of individuals' eligibility for settlements under the White Earth Reservation Land Settlement Act and the Hoopa-Yurok Settlement Act. These changes would affect the distribution of existing funds, and would not result in additional costs to the federal government. A provision mandating the full participation of tribal groups in the determination of eligibility in the Hoopa-Yurok case could result in some administrative costs. However, we do not expect these costs to be significant.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Marta Morgan, who can be reached at 225-2860.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the

regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 1846, as amended, will have no impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee received no communication from the Department of the Interior or from the Department of Health and Human Services giving the Administration's views on S. 1846.

CHANGES IN EXISTING LAW

Subsection 12 of rule XXVI of the Standing Rules of the Senate, requires that proposed changes in existing law to be made by a reported bill be enumerated in the report. In the opinion of the Committee, it is necessary to dispense with the requirements of this subsection to expedite the business of the Senate.

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